

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.4897 OF 2004
IN
CRIMINAL APPLICATION NO.657 OF 2005

The State of Maharashtra.

..Applicant.

v/s.

Sopan Abarao Bhosale & ors.

.. Respondents.

Ms.Usha Kejariwal, Additional Prosecutor for the
State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 7th February, 2005

P.C.

On 9.12.2003 the Judicial Magistrate, First
Class, Khandala acquitted the respondents herein of
the offences punishable under sections 143, 147,
148, 326 read with section 149, 504 read with
section 149 of the IPC and of the offence under
section 37(1)/135 of the Bombay Police Act read with
section 149 of the IPC.

2. Upset by the judgment of acquittal, the State of
Maharashtra filed appeal on 2nd November, 2004. The
appeal suffers from delay and hence by the present
application, the State prays that delay in filing
the appeal be condoned.

3. As already noticed above, the impugned judgment
was delivered on 9.12.2003. The application for
certified copy was made on 12.12.2003. The
certified copy was ready on 6.1.2004 and delivered

to the concerned Public Prosecutor on that very day. The concerned Public Prosecutor by his advice dated 29.1.2004 recommenced the Law and Judiciary Department, Mantralaya that the case was fit for an appeal against the judgment of acquittal. The Law and Judiciary Department is said to have scrutinised the matter and by resolution dated 23.2.2004 asked the Public Prosecutor, High Court, Appellate Side, Mumbai to prefer the appeal against the judgment of acquittal. The said Government resolution was received by the office of the Public Prosecutor, High Court, Appellate Side, Mumbai on 25.2.2004. More than 8 months thereafter, the present appeal was filed by the Public Prosecutor, High Court, Appellate Side, Mumbai. Precisely, the delay is of 213 days.

4. The narration of dates as mentioned above indicate that the last date of filing the appeal was 2.4.2004, after excluding the time taken in obtaining the certified copy of the judgment dated 9.12.2003. Admittedly, the Government resolution dated 23.2.2004 directing the Public Prosecutor, High Court, Appellate Side, Mumbai to prefer the appeal against the judgment of acquittal was received by the office of the Public Prosecutor, High Court, Appellate Side, Mumbai on 25.2.2004. The office of the Public Prosecutor, High Court, Appellate Side, Mumbai, thus, had sufficient time for filing the appeal within limitation. Not only

that, the appeal was not filed in time, it appears that the matter was put in cold storage by the office of the Public Prosecutor, High Court, Appellate Side, Mumbai and only on 2nd November, 2004, the appeal was filed. As usual, the stereo-type explanation has been put forth in the application that it was due to heavy workload, pressure of work and non-availability of stenographers. The application is verified by one S.A. Pednekar, senior clerk in the office of the Public Prosecutor and strangely he has introduced the ground of his illness in the application. The ground of illness is as vague as it could be. No details of illness are given. The period during which Mr.S.A.Pednekar remained ill is also not stated. Surely, he was not ill for the entire period from 25.2.2004 until the application was made on 2nd November, 2004. Moreover, it does not fathom to reason that because of the illness of a senior clerk in the office of the Public Prosecutor, the entire work of the office of Public Prosecutor stood paralysed and even the matters which could become time barred, could not be attended to by the concerned persons in the office of the Public Prosecutor.

5. On a whole, we find that the delay of 213 days remains unexplained and there is no sufficient cause spelt out for such long delay.

6. Criminal application for condonation of delay
is, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)